

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MITCHELL C. LOVE

§

*Plaintiff*

§

§

5:13-cv-587

v.

§

§

JURY DEMANDED

TI-ZACK CONCRETE, INC., AND

§

ROBERT RICHARD CLAFFEY

§

*Defendants*

§

§

**NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Please take notice that DEFENDANTS TI-ZACK CONCRETE, INC., AND ROBERT RICHARD CLAFFEY, hereby remove to the Court the state action described below pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of the removal and in accordance with codified requirements 28 U.S.C. § 1446(a), (b)(3) DEFENDANTS TI-ZACK CONCRETE, INC., AND ROBERT RICHARD CLAFFEY state as follows:

1. TI-ZACK CONCRETE, INC. AND ROBERT RICHARD CLAFFEY are defendants in a civil action brought on May 15, 2013, in the District Court of Gonzales County, Texas, 25<sup>th</sup> Judicial District. Pursuant to the provisions 28 U.S.C. §§ 1441 and 1446, Defendants remove this action to the United States District Court for the Western District of Texas, San Antonio Division, which is the judicial district and division in which the action is pending.

2. On May 15, 2013, a civil action was commenced, in the 25th Judicial District Court of Gonzales County, Texas, entitled *Mitchell C. Love vs. Ti-Zack Concrete, Inc. and Robert Richard Claffey*; Cause No. 25319. A copy of Plaintiff's Original Complaint is attached hereto as Exhibit "A."

3. On June 6, 2013 Defendants filed their Original Answer, Special Exception, Motion to Abate and Request for Disclosure. The file-marked copy is herein attached as **Exhibit "B."**

4. On June 10, 2013, Plaintiff served his First Amended Original Petition to Defendants, which is attached hereto as **Exhibit "C."**

5. Defendants have attached all process, pleadings, and orders in the State Court action which have been served upon them as required by 28 U.S.C. 1446(a).

#### **JURISDICTION AND VENUE**

6. The action is a civil action of which this Court has original jurisdiction under Title 28 U.S.C. § 1332 (Diversity Jurisdiction), and is one which may be removed to this Court pursuant to Title 28 U.S.C. § 1441. There is complete diversity of citizenship amongst the parties.

7. Plaintiff MITCHELL C. LOVE is a citizen of Texas residing in Refugio County, Texas. (*See Exhibit C*)

8. At the time suit was filed, and at the time of this removal action, Defendant TI-ZACK CONCRETE, INC. is a corporation, organized and formed under the laws of the State of Minnesota, with its principal place of business in the state of Minnesota, and who is diverse to Plaintiff's citizenship. (*See Exhibit D*)

9. At the time suit was filed, and at the time of this removal action, Defendant Robert Richard Claffey is an individual and citizen of the State of Minnesota residing in Le Sueur County, Minnesota, and who is diverse to Plaintiff's citizenship. (*See Exhibit E*)

10. All Defendants consent to this removal action.

11. Venue is proper in the Western District of Texas, San Antonio Division, because this district and division embrace the place in which the action is pending.

12. The amount in controversy exceeds the sum of Seventy-Five Thousand and 00/Dollars (\$75,000.00), exclusive of interest and costs. Plaintiff alleges injuries and damages arising from an automobile incident which occurred on or about February 14, 2013 in Gonzales County, Texas. As a result of this incident, Plaintiff claims damages and monetary relief over \$1,000,000.00 (*See Exhibit C*)

13. Plaintiff's First Amended Original Petition was received via facsimile on June 10, 2013 and was the first notice defendants received that the amount in controversy exceeded \$75,000.00. This Notice of Removal is filed within 30 days of receipt of the Plaintiff's First Amended Original Petition and within one year of the commencement of the action, so that it is timely filed under 28 U.S.C. § 1446 (b)(3), (c).

14. Additionally, this court would have original subject matter jurisdiction of this action under the provisions of 28 U.S.C. § 1332 if the action had originally been brought in federal court. Accordingly, Defendants may properly remove the State Court action pursuant to 28 U.S.C. § 1441.

15. Pursuant to 28 U.S.C. §1446(d) Defendants have served written notice on Plaintiff of the filing of this Notice of Removal and have also served a true and correct copy with the State Court, as required by 28 U.S.C. §1446(d).

Respectfully submitted,

Date: July 8, 2013

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BY: /s/ Veronica J. Lane  
VERONICA J. LANE  
State Bar No. 24046264

**ATTORNEY FOR DEFENDANTS,  
TI-ZACK CONCRETE, INC., AND  
ROBERT RICHARD CLAFFEY**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 8, 2013, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of below in the manner specified, either via CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic filing.

Thomas J. Henry  
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**Via Facsimile: (361) 985-0601**

/s/ Veronica J. Lane  
VERONICA J. LANE